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**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE, individually and on behalf of all others similarly situated)	No.
Plaintiffs,)	
)	COMPLAINT FOR DAMAGES AND
v.)	INJUNCTIVE RELIEF
)	DEMAND FOR JURY TRIAL
BANK OF AMERICA CORPORATION,)	CLASS ACTION
)	
Defendants.)	

Plaintiff Jane Doe (“Doe” or “Plaintiff”) brings this class action on behalf of herself individually and all those similarly situated against Defendant Bank of America Corporation (“Bank of America” or “Defendant”), and alleges as follows:

INTRODUCTION

1. This class action lawsuit challenges Bank of America’s policy and practice of rejecting job applicants because the applicant has an actual or presumed arrest not resulting in a conviction (“no arrest policy”). The action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, as amended by the Civil Rights Act of 1991 (Title VII), the California Fair Employment and Housing Act, Cal. Gov. Code § 12940(a) (“FEHA”), California Labor Code § 432.7 (“Labor

Code section 432.7”), and the California Unfair Business Practices Act, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, also known as the Unfair Competition Law (“UCL”). Bank of America’s no arrest policy violates Title VII and the FEHA because the policy has a disparate impact on African Americans given the disproportionate arrest rate for Blacks, and is not job related or consistent with business necessity. 42 U.S.C. § 2000e-2(k); Cal. Gov. Code § 12940(a). In addition, the no arrest policy violates Labor Code section 432.7 which prohibits an employer from seeking information about an arrest which did not result in a conviction or from using the record of such an arrest as a factor in making employment decisions, including hiring. Based on the violations of Title VII, the FEHA, and Labor Code section 432.7, the no arrest policy is unlawful under the UCL.

2. Plaintiff seeks declaratory, injunctive, and equitable and monetary relief, restitution, and an award of costs, expenses, and attorneys’ fees for herself and on behalf of the classes alleged herein.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

3. Jurisdiction: The Court has jurisdiction of Plaintiff’s Title VII claim under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3). The Court has supplemental jurisdiction of Plaintiff’s state law claims under the FEHA, Labor Code section 432.7, and the UCL pursuant to 28 U.S.C § 1367.

4. Venue: Venue is proper in, and Bank of America is subject to the personal jurisdiction of, this Court because Bank of America maintains facilities and business operations in this District, and the events giving rise to this action occurred in this District. 28 U.S.C. § 1391(b); 42 U.S.C. § 2000e-5(f)(3).

5. Intradistrict Assignment: Assignment of this action to the San Francisco/Oakland Division of this Court is proper pursuant to Local Rule 3-2(c) and (d) because the events giving rise to this action occurred in Alameda County California. In particular, Bank of America rejected Plaintiff’s employment applications in Alameda County.

PARTIES

6. Plaintiff Jane Doe is an African American woman who resides in Alameda County, California.

7. Defendant Bank of America is a Delaware corporation with its headquarters in Charlotte, North Carolina. Bank of America maintains facilities and business operations in this District.

8. Bank of America has approximately 242,000 employees in the United States, including employees at approximately 1,000 facilities in California. Bank of America operates in all 50 states.

9. With 15 or more employees, Bank of America is an employer within the meaning of Title VII, 42 U.S.C. § 2000e(b), and the FEHA, Cal. Gov. Code § 12925(d).

FACTS COMMON TO ALL CAUSES OF ACTION

10. Prior to March 14, 2011, Ms. Doe worked for Bank of America as a seasonal clerk. Bank of America voiced no complaints about her job performance.

11. On March 14, 2011 Ms. Doe was arrested by the Antioch, California police. The District Attorney never charged Ms. Doe with any of the crimes for which she was arrested, or for any other crimes. Ms. Doe had not been arrested before the March 14th incident and has not been arrested since.

12. From July 2011 through February 2013, Ms. Doe applied for a seasonal data entry clerk position with Bank of America through a number of staffing agencies, including Staffmark, Manpower, and Nelson Staffing Agency. Each time she applied, Ms. Doe was fingerprinted, and Bank of America ran a criminal record background check. After the background check, each of Ms. Doe's applications was rejected.

13. Ms. Doe is informed and believes and on that basis alleges that Bank of America, after performing a criminal record background check, disqualified her for employment solely because of her March 14, 2011 arrest which did not result in the filing of charges or a conviction. This allegation is based on Ms. Doe's pre-arrest employment and post-arrest rejections for the same position, written confirmation from

1 the staffing agency at Bank of America that Ms. Doe was not qualified for the position
 2 due to the results of her federal fingerprinting, and comments by staffing agencies'
 3 personnel, including a statement by a Staffmark administrator that to be hired at Bank of
 4 America her record had to be "squeaky clean," without even "traffic violations."

5 14. Ms. Doe is informed and believes and on that basis alleges that Bank of
 6 America has a policy and/or practice of rejecting job applicants because the applicant
 7 has an actual or presumed arrest not resulting in a conviction. This allegation is based on
 8 Ms. Doe's pre-arrest employment and post-arrest rejections, written confirmation from
 9 the staffing agency at Bank of America that Ms. Doe was not qualified for the position
 10 due to the results of her federal fingerprinting, and the comments by staffing agencies'
 11 personnel, including a statement by a Staffmark administrator that to be hired at Bank of
 12 America her record had to be "squeaky clean," without even "traffic violations."

13 15. Ms. Doe desires to work for Bank of America in the future, but the
 14 bank's unlawful policy and practice of disqualifying persons based on an arrest without
 15 a conviction precludes her future employment with the Bank of America.

16 16. In 2010, African Americans make up approximately 7.2% of
 17 California's general population and approximately 5.5% the state's civilian labor force.
 18 *The Black Population: 2010*, U.S. Census Bureau 8, (Sept. 2011); State Data Center,
 19 State of California Equal Employment Opportunity (EEO) Tabulation 2006-2010,
 20 [http://www.dof.ca.gov/research/demographic/state_census_data_center/american_comm](http://www.dof.ca.gov/research/demographic/state_census_data_center/american_community_survey/EEO2010.php)
 21 [unity_survey/EEO2010.php](http://www.dof.ca.gov/research/demographic/state_census_data_center/american_community_survey/EEO2010.php)" \l "EEO2010. In contrast, approximately 16.7% of those
 22 arrested for felony or misdemeanor violations in California in 2010 were African
 23 American. Kamala D. Harris, California Department of Justice, *Crime in California* 33
 24 (2010). In 2010, whites made up approximately 40% of California's population and
 25 approximately 43.9% of the civilian labor force. *The White Population: 2010*, U.S.
 26 Census Bureau, (Sept. 2011); State Data Center, State of California Equal Employment
 27 Opportunity (EEO) Tabulation 2006-2010 8.
 28 http://www.dof.ca.gov/research/demographic/state_census_data_center/american_comm

unity_survey/EEO2010.php" \l "EEO2010. In 2010, whites accounted for approximately 36% of felony and misdemeanor arrests. Kamala D. Harris, California Department of Justice, *Crime in California* 33 (2010). In 2010 nearly 8.5% of California's black population was subject to arrest for violations of law. *Crime in California* 16 and 33 (2010); *The Black Population: 2010* at 8. The corresponding figure for whites was approximately 3%. *Crimes in California* at 16 and 33; *The White Population: 2010* at 8.

17. In 2010, 13.6% of the U.S. population and 11.6% of the civilian labor force was African American. U.S. Census Bureau, *The Black Population: 2010*, at 3; Bureau of Labor Statistics, *Employment Projection Civilian Labor Force by Age, Sex, Race and Ethnicity*, Table 3.4, (December 19, 2013). In 2010, African Americans accounted for approximately 28% of the arrests nationwide. U.S. Department of Justice, *Federal Bureau of Investigation, 2010 Crime in the United States*, Table 43. In 2010, whites made up over 72.4% of the general population and 79.8% of the national civilian labor force. *The White Population: 2010* at 3; Bureau of Labor Statistics, *Employment Projection Civilian Labor Force by Age, Sex, Race and Ethnicity*, Table 3.4, (December 19, 2013). In 2010, whites accounted for approximately 69.4% of the arrests. U.S. Department of Justice, *Federal Bureau of Investigation, 2010 Crime in the United States*, Table 43. Nationally, almost 6.8% of African Americans were arrested in 2010 compared to approximately 3.2% of whites. *Id.*; *The Black Population: 2010*, at 3; *The White Population: 2010* at 3.

18. Because African Americans are arrested at a higher rate than whites, Bank of America's policy and practice of disqualifying persons for employment based on an arrest, not resulting in a conviction, has a disparate impact on African Americans.

19. The EEOC's *Enforcement Guidelines on the Consideration of Arrests and Convictions under Title VII of the Civil Rights Act of 1964*, EEOC Enforcement Guidelines No. 915.002 (4/25/12) instruct that disqualification from employment based solely on an arrest violates Title VII. *Guidelines*, ¶V.B.2, p. 12.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. On August 5, 2013, Plaintiff filed Charges of Discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”). These Charges were cross-filed with the Department of Fair Employment and Housing (“DFEH”).

21. On February 24, 2014, the EEOC mailed Ms. Doe a Notice of Right to Sue, which was received by counsel on February 26, 2014.

22. Plaintiff commenced this action within 90 days of receiving the Notice of Right to Sue.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of herself and all persons similarly situated in the subclasses alleged herein pursuant to F.R.Civ.P, Rule 23 (a) and 23 (b)(2) and (b)(3).

24. Injunctive relief subclasses under Rule 23 (b)(2).

- A. Title VII/FEHA injunctive subclass: All African Americans in California whose applications for employment have been rejected or will be rejected by Bank of America because they had an actual or presumed arrest which did not result in a conviction.
- B. Section 432.7 injunctive subclass: All persons in California whose applications for employment have been rejected or will be rejected by Bank of America because they had an actual or presumed arrest which did not result in a conviction.

25. Monetary relief subclasses under Rule 23(b)(3).

- A. Title VII/FEHA monetary subclass: All African Americans in California whom Bank of America rejected for employment since October 19, 2012 because they had an actual or presumed arrest which did not result in a conviction.
- B. Section 432.7 monetary subclass: All applicants for employment with Bank of America in California, beginning four years prior to

1 the filing of this complaint, who were not hired because they had
2 an actual or presumed arrest which did not result in a conviction.

3 26. Plaintiff is a member of each of the subclasses she seeks to represent.

4 27. Plaintiff, as class representative, and the subclasses as defined above
5 satisfy the requirements of Rule 23(a)(1)-(4).

6 A. Rule 23(a)(1) – Numerosity. The exact sizes of the Title
7 VII/FEHA and the Labor Code section 432.7 subclasses are not
8 known at present and will be determined through discovery.
9 However, Bank of America employs approximately 1,000
10 facilities in California. Consequently, it is likely that the Title
11 VII/FEHA injunctive relief and monetary relief subclasses
12 include in excess of one hundred rejected African American
13 applicants. Similarly, it is likely that the Labor Code section
14 432.7 injunctive relief and monetary subclasses include in excess
15 of one hundred rejected applicants. In addition, the members of
16 each subclass are spread throughout California. Accordingly, the
17 members of each subclass are so numerous and so situated that
18 individual joinder of the members of each subclass before this
19 Court is impracticable.

20 B. Rule 23(a)(2) – Commonality. This case presents common
21 factual and legal questions because members of each subclass
22 have suffered a similar injury (rejection of application for
23 employment) as a result of Bank of America's application of a
24 single policy and practice (disqualification from employment
25 based on an arrest not resulting in a conviction). More
26 specifically, resolution of one common factual and legal question
27 – whether Bank of America has such a policy and practice and
28 whether that policy is illegal-- will generate a common answer

determinative of liability under section 432.7 and determinative of an element of the Title VII and the FEHA disparate impact claims. In addition, the resolution of mixed common factual and legal questions will produce common answers to other issues raised by the Title VII and FEHA claims, e.g., whether the no arrest policy and practice has an unlawful disparate impact on African Americans, whether the policy and practice is job related and consistent with business necessity, and, if so, whether there is a less discriminatory alternative to the no arrest policy, without a similar discriminatory effect, which would serve Bank of America's legitimate business interests.

C. Rule 23(a)(3) – Typicality. The claims of the Plaintiff are typical of the claims of the members of the subclasses. Class members have suffered the same or similar injury caused by the same course of conduct (rejection of application because the applicant has an arrest not resulting in a conviction), the application of the policy is not unique to Plaintiff, and the Plaintiff's claims are not subject to unique defenses.

D. Rule 23(a)(4) – Adequacy. Plaintiff will fairly and adequately represent and protect the interests of the members of the subclasses. Plaintiff has no conflicts of interest with the proposed subclasses. Plaintiff continues to desire employment with Bank of America and is committed to having Bank of America eliminate its policy and practice of disqualifying persons from employment based on an arrest not resulting in a conviction. Plaintiff is represented by competent counsel.

28. The claims of the injunctive relief subclasses under Title VII/FEHA and section 432.7 are properly litigated pursuant to Rule 23(b)(2). The no arrest policy

1 would equally serve any alleged business necessity. Accordingly, Bank of America's
 2 no arrest policy and/or practice violates rights secured to Plaintiff and the Title VII
 3 injunctive relief subclass and the Title VII monetary relief subclass by Title VII.

4 32. Plaintiff and the members of the Title VII injunctive relief subclass have
 5 no plain, adequate, or complete remedy at law to redress the wrongs alleged herein. The
 6 injunctive relief sought in this action is the only means of securing complete and
 7 adequate relief. Plaintiff and the injunctive relief subclass are now suffering, and will
 8 continue to suffer, irreparable injury from Bank of America's discriminatory acts and
 9 omissions.

10 33. Bank of America's conduct has caused and continues to cause Plaintiff
 11 and members of the Title VII monetary subclass substantial lost earnings and other
 12 employment benefits.

13 34. To remedy the violation of the rights of Plaintiff and the members of the
 14 Title VII injunctive relief subclass and the Title VII monetary relief subclass, Plaintiff
 15 requests that the Court award them the relief prayed for below.

16 **SECOND CLAIM FOR RELIEF**

17 California Fair Employment and Housing Act,

18 Cal. Gov. Code § 12940(a)

19 On behalf of Plaintiff and the FEHA Injunctive Relief and Monetary Relief Subclasses
 20

21 35. Plaintiff incorporates by reference all allegations in all preceding
 22 paragraphs.

23 36. Bank of America's no arrest policy and/or practice, which has a disparate
 24 impact on African Americans as described above, violates rights secured by the FEHA
 25 to Plaintiff and the members of the FEHA injunctive relief subclass and monetary relief
 26 subclass.
 27
 28

1 subclasses have incurred and will continue to incur actual damages, including, without
2 limitation, lost pay, lost employment benefits, general damages, and special damages.

3 44. To remedy Bank of America's violations of the rights of Plaintiff and the
4 members of the Labor Code section 432.7 subclasses, Plaintiff requests that the Court
5 award them the relief prayed for below.

6
7 **FOURTH CLAIM FOR RELIEF**

8 California Unfair Business Practices Act

9 Business and Professions Code §§ 17200, *et seq.*

10 On behalf of Plaintiff and All Subclasses

11 45. Plaintiff incorporates by reference all allegations in all preceding
12 paragraphs.

13 46. Bank of America's policy and/or practice of disqualify person from
14 employment because they have an arrest not resulting in a conviction, as described
15 above, violates rights secured to Plaintiff and the members of the Title VII/FEHA
16 subclasses under Title VII and the FEHA, and rights secured to Plaintiff and the
17 members of the Labor Code section 432.7 subclasses under Labor Code section 432.7.
18 Bank of America's policy and/or practice therefore constitutes an unlawful or fraudulent
19 business act or practice that violates Business and Professions Code section 17200, *et*
20 *seq.* This conduct occurred during the four years preceding the filing of this complaint.

21 47. Plaintiff, on behalf of herself, all subclasses, and the general public, and
22 in order to enforce California's public policy against employment discrimination and
23 violations of Labor Code section 432.7, as secured by the UCL, request that the Court
24 award the relief prayed for below.

25 **DECLARATORY RELIEF ALLEGATIONS**

26 48. Plaintiffs re-allege and incorporate herein all previously alleged
27 paragraphs of the complaint.

1 49. An actual controversy exists between Plaintiffs and Defendant
 2 concerning their respective rights and duties. Plaintiff contends Defendant violated her
 3 rights under Title VII, FEHA, and the California Labor Code, and the Unfair Business
 4 Practices Act. Plaintiffs are informed and believe, and thereupon allege, that Defendant
 5 denies that these actions were unlawful. Declaratory relief is therefore necessary and
 6 appropriate.

7 50. Plaintiffs seek a judicial declaration of the rights and duties of the
 8 respective parties, including a declaration of Defendant's duty to comply with the law.

9 **INJUNCTIVE RELIEF ALLEGATIONS**

10 51. Plaintiffs re-allege and incorporate herein all previously alleged
 11 paragraphs of the complaint.

12 52. No previous application for injunctive relief sought herein has been made
 13 to this Court.

14 53. If this Court does not grant the injunctive relief sought herein, Plaintiffs
 15 will be irreparably harmed.

16 54. No plain, adequate, or complete remedy at law is available to Plaintiffs to
 17 redress the wrongs addressed herein.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff and the all subclasses pray that the Court provide the
 20 following relief:

- 21 A. Certification of the injunctive relief subclasses pursuant to F.R.Civ.P,
 22 Rule 23(b)(2);
- 23 B. Certification of the monetary relief subclasses pursuant to F.R.Civ.P,
 24 Rule 23(b)(3);
- 25 C. Designation of Jane Doe and her attorneys as representatives of the
 26 subclasses certified pursuant to Rule 23(a); (b)(2); and (b)(3);
- 27 D. A judgment declaring that Bank of America's policy and/or practice of
 28 rejecting applicants and terminating employees because they have an

1 arrest not resulting in a conviction is unlawful under Title VII, the
2 FEHA, Labor Code section 432.7, and the UCL;

3 E. A preliminary and permanent injunction preventing Bank of America and
4 its officers, directors and employees from rejecting applicants because
5 they have an arrest not resulting in a conviction;

6 F. A preliminary and permanent injunction requiring Bank of America to
7 implement policies, practices, and programs that ensure that African
8 American applicants are not discriminated against with respect to terms
9 and conditions of employment because they have an arrest not resulting
10 in a conviction;

11 G. A preliminary and permanent injunction requiring Bank of America to
12 carry out policies, practices, and programs that ensure that applicants for
13 employment are not subjected to policies or practices which violate
14 Labor Code section 432.7;

15 H. A preliminary and permanent injunction providing appropriate individual
16 injunctive relief to Plaintiff, including without limitation, an injunction
17 requiring Bank of America to consider her for employment without
18 regard to the fact that she has an arrest not resulting in a conviction;

19 I. A preliminary and permanent injunction providing appropriate individual
20 injunctive relief to members of the Title VII/FEHA injunctive subclass
21 and to the members of the Labor Code section 432.7 injunctive subclass
22 who establish that they are entitled to injunctive relief;

23 J. Award of monetary relief as follows:

24 a. On the First Claim For Relief, order Bank of America to pay back
25 and front pay to Plaintiff and the members of the Title VII
26 monetary subclass in an amount to be proved at trial;

- 1 b. On the Second Claim for Relief, order Bank of America to pay
2 back and front pay to Plaintiff and the members of the FEHA
3 monetary subclass in an amount to be proved at trial;
4 c. On the Third Claim for Relief, order Bank of America to pay
5 Plaintiff and the members of the Labor Code section 432.7
6 applicant monetary subclass damages in accordance with Labor
7 Code Section 432.7, subdivision (c);
8 d. On the Fourth Claim For Relief, order Bank of America to make
9 restitution to the Plaintiff and the members of monetary
10 subclasses on whose behalf claims are asserted who were
11 deprived of wages, compensation, fringe benefits, or other
12 equitable monetary relief as a result of Bank of America's
13 violations of law to the extent the UCL provides such remedies;
14 K. An award of pre-judgment and post-judgment interest on all monetary
15 amounts awarded in this action, as provided by law;
16 L. An award of reasonable attorneys' fees, costs, and expenses; and
17 M. An award of such other and further relief that the Court finds equitable,
18 just, and proper.

19
20 Dated: April 8, 2014

Respectfully submitted,

21 William C. McNeill, III
22 Marsha J. Chien
23 THE LEGAL AID SOCIETY-
24 EMPLOYMENT LAW CENTER,

25 By: /s/ Marsha J. Chien
26 MARSHA J. CHIEN
27 Attorney for Plaintiffs
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DEMAND FOR JURY TRIAL

Pursuant to Local Rule 38.1, plaintiff Jane Doe demands a jury trial.

Dated: April 8, 2014

Respectfully submitted,

William C. McNeill, III
Marsha J. Chien
THE LEGAL AID SOCIETY-
EMPLOYMENT LAW CENTER,

By: /s/ Marsha J. Chien
MARSHA J. CHIEN
Attorney for Plaintiffs